

cf 102 (4)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
[CHHATTISGARH]

Misc. Appeal No. 142 OF 2005

Division Bench

APPELLANT
INSURANCE

✓ Oriental Insurance Company Ltd.
Branch Itwari Bazar, **Raigarh** (CG)

VERSUS

RESPONDENTS
CLAIMANTS

✓ 1. Sampatlal s/o Surjo Sidar, aged 55 years, Occupation-Teacher, Govt. Higher Secondary School, Orda, r/o Gram-Jharmuda, P.S. Pusore.

✓ 2. Phoolmati w/o Sampatlal Sidar, aged 50 years, Occupation-Housewife, r/o Gram-Jharmuda, P.S. Pusore, District **Raigarh** (CG).

✓ 3. Fatte Singh s/o Ajit Singh, aged 36 years, r/o Gram-Mitthumuda, Hiranagar, **Raigarh** (CG).

✓ 4. Gopiram s/o B.L. Jain, aged 60 years, r/o Near Goga Rice Mill, Jute Mill, **Raigarh** (CG).

DRIVER

OWNER

APPEAL U/S 173 OF MOTOR VEHICLES ACT AGAINST THE AWARD/ORDER DATED 9-12-2004 PASSED BY THE SECOND ADDITIONAL CLAIMS TRIBUNAL, RAIGARH IN C.T. NO. 54/2003

Appeal valued at Rs1,17,000/- Court Fee affixed Rs.15/-

The appellant respectfully begs to submit as under:

P.R. No. 719105
Presented by Shri. 621 Parshad
dated 09.10.05

आदेश पत्रक

मामला क्रमांक M.A. NO. 142/2006
सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH:</u> <u>HON'BLE SHRI V.K. SHRIVASTAVA &</u> <u>HON'BLE SHRI DHIRENDRA MISHRA, JJ.</u> <u>12/05/2006</u> Shri Abhishek Sinha, Counsel for the appellant. None for the respondent. Heard on admission and on M.C.P.No.184/2006. This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, "the Act") is directed against the award dated 09/12/2004 passed by the IInd Additional Claims Tribunal, Raigarh in Claim Case No. 54/2003 vide which the learned Tribunal has allowed the petition filed by respondents No. 1 and 2 under Section 166 of the Act and awarded compensation of Rs. 1,17,000/- against the appellant, respondents No. 3 and 4. Respondents No. 1 and 2 legal representatives being parents of deceased Ku. Gayatri filed a petition under Section 166 of the Act, claiming compensation on the ground that their daughter Ku. Gayatri aged about 18 years met with a motor accident on 14/02/2003. Ku. Gayatri sustained severe injuries and as a result of those injuries, during the medical treatment succumbed to that on 27/02/2003. Respondent No.3 driving Truck bearing registration No. CG-13ZC/0141 by rash and negligent manner caused the accident. The owner of the vehicle is respondent No.4 and at the relevant time vehicle was insured with appellant. The	

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	claim was opposed by appellant as well as by respondents No. 3 and 4. Appellant/Insurance Company also took a defence that at the relevant time the vehicle was driven by respondent No.3 without valid driving licence, therefore, is not liable to pay the compensation. Learned Tribunal after due appreciation of the evidence held that the driver had valid licence for driving heavy goods vehicle, but only fault on his part is that he could not get his licence renewed for 14/02/2003. The breach of condition has not been proved. Therefore, the Insurance Company cannot escape from its liability to pay the compensation, hence, vide impugned award liability on Insurance Company has also been fastened for payment of compensation amount. The defence available to Insurance Company towards its liability to pay the compensation arising out of an accident is available under Section 149 of the Act. So far as defence of valid and effective driving licence is concerned, relevant part of section 149 (2) of the Act reads as below: <i>"149(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had</i>	

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	<i>notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal, and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-</i> <i>(a)-(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or".</i> Learned counsel for the appellants relying on the judgment rendered by Hon'ble the Apex Court in National Insurance Co. Ltd., Vs. Swaran Singh and others, reported in 2004 AIR SCW 663 contended that on the date of accident, driver had no valid and effective driving licence, to drive heavy motor vehicles, therefore, appellant/Insurance Co., is not liable to pay the compensation. Hon'ble the Apex Court held that; <i>"It is beyond any doubt or dispute that under S. 149(2) of the Act an insurer, to whom notice of the bringing of any</i>	

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	<i>proceeding for compensation has been given, can defend the action on any of the grounds mentioned therein. However, Cl. (a) opens with the words 'that there has been a breach of a specified condition of the policy,' implying that the insurer's defence of the action would depend upon the terms of the policy. The said sub-clause contains three conditions of disjunctive character, namely, the insurer can get away from the liability when (a) a named person drives the vehicle; (b) it was being driven by a person who did not have a duly granted licence; and (c) driver is a person disqualified for holding or obtaining a driving licence. Note of the fact is also to be taken that whereas in S.3 the words used are 'effective licence', it has been differently worded in S.149(2) i.e., 'duly licenced'. If a person does not hold an effective licence as on the date of the accident, he may be liable for prosecution in terms of S.141 of the Act but S.149 pertains to insurance as regard third party risks. A provision of a statute which is penal in nature vis-à-vis a provision which is beneficent to a third party must be interpreted differently. It is also well-known that the provisions contained in different expressions are ordinarily construed differently. The word 'effective licence' used in S.3, therefore, cannot be imported for sub-section(2) of S/149 of the Motor Vehicles Act. The words 'duly licenced' used in sub-section (2) of S.149 are used in past tense. The Insurance Companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also</i>	

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	<i>establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them. The Court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case. Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy condition would apply 'the rule of main purpose' and the concept of 'fundamental breach' to allow the defences available to the insured under S.149 (2) of the Act. The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfill the requirements of law or not will have to be determined in each case"</i> Here, in the instant case, driver had licence to drive light motor vehicles from 20/12/1990 to 12/07/2006. Undisputedly he was also authorized to drive heavy goods vehicle from 20/12/1990 to 11/02/1996 thereafter driver got his licence renewed up to 19/08/2002. Learned Tribunal held that the driver had a valid driving licence to drive heavy goods vehicle but his licence was not	

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	renewed for 14/02/2003 i.e., the date of occurrence. As per finding of the Tribunal on 14/02/2003, driver had a licence, but was not effective for want of its renewal. Section 15 of the Act envisages that any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry; provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal. Further, it is provided that if application is made more than five years after the driving licence has ceased to be effective, the licensing authority may refuse to renew the driving licence, unless the applicant undergoes and passes to its satisfaction the test of competence to drive referred to in sub-section (3) of section 9. Therefore, if application for renewal has been made within 30 days from the date of its expiry, the renewal shall take effective from the date of its expiry and if application is filed after the date of its expiry, the renewal shall be effective from the date of its renewal. Undisputedly, the driver had a licence up to 19/08/2002 to drive the heavy goods vehicles and the accident took place on 14/02/2003. The renewal of licence was within zone of consideration and if application had been made, the licence was to be renewed. Appellant did not plead that the driver	

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	did not file application for renewal within thirty days of its expiry or thereafter before the date of occurrence. Here it is not out of place to expose that from perusal of the licence i.e., Ex. D/1 (c) the portion c to c one can by his naked eyes see that the renewal was granted for the period from 20/08/1999 to 19/08/2004 and the driver in his evidence also deposed that his licence was renewed for the period from 20/08/1999 to 19/08/2004. Therefore, till it is pleaded and proved to be a fake or fraudulent, presumption would be that of its correctness. Insurance Company i.e., appellant cannot escape from the obligation to indemnity the insured unless the appellant successfully proves that the insured is at fault and is guilty of breach. Here in the instant case, no such plea has been taken by the appellant. On the contrary, from the driving licence itself, it is apparent that the driver has a valid driving licence to drive heavy goods vehicle, even entry of renewal was upto 19/08/2004. No other points have been raised in the instant appeal. We are of the considered opinion that the appeal has no merit and it is devoid of substance. In the result, the appeal is liable to be dismissed summarily, therefore, it is dismissed in limine.	
Raju	Sd/- V.K.Shrivastava Judge	Sd/- Dhirendra Mishra Judge

[पीछे देखिये]

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